

HOPKINS & SCHAFKOPF, LLC
ATTORNEYS AT LAW

November 2, 2017

U.S. District Court, ED of PA
Office of the Clerk of Court
U.S. Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106

Re: Sherman Hart v. Gerald J Pomerantz Esq and Gerald Jay Pomerantz & Associates PC

To Whom It May Concern:

Enclosed please find one (1) original and one (1) copy of Plaintiff's Civil Action Complaint, along with a CD containing a pdf version of same and a check in the amount of \$400.00, in regards to the above captioned matter.

Kindly file the original Complaint and return a time-stamped copy to the undersigned along with the Civil Action Summonses.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Schafkopf". The signature is fluid and cursive, with the first name "Gary" and last name "Schafkopf" clearly distinguishable.

Gary Schafkopf, Esq.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Sherman Hart**DEFENDANTS**
Gerald J Pomerantz Esq and Gerald Jay Pomertantz & Associates

(b) County of Residence of First Listed Plaintiff Jefferson County Kentucky
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Philadelphia County, PA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Schafkopf Law LLC 11 Bala Ave Bala Cynwyd PA 19004 610-664-5200
Weisberg Law 7 South Morton Ave Morton PA 19070 610-690-0801

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332

Brief description of cause:
Legal Malpractice

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/02/2017

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1062 Cecil Ave Louisville KY 40211

Address of Defendant: 21 South 12th Street Floor 7 Philadelphia PA 19107

Place of Accident, Incident or Transaction: Philadelphia PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases
(Please specify) Legal Malpractice

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, _____, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: _____

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/2/17

Attorney-at-Law

83362

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Sherman Hart

v.

Gerald J Pomerantz, Esq et al

:
:
:
:
:

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>11/2/17</u>	<u>Gary Schafkopf, Esq</u>	<u>Plaintiff</u>
Date	Attorney-at-law	Attorney for
<u>610-664-5200</u>	<u>888-283-1334</u>	<u>gary@schaflaw.com</u>
Telephone	FAX Number	E-Mail Address

**Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

WEISBERG LAW
Matthew B. Weisberg, Attorney ID No.: 85570
7 South Morton Ave.
Morton, PA 19070
610-690-0801
Fax: 610-690-0880
Attorney for Plaintiffs

SCHAFKOPF LAW, LLC
Gary Schafkopf, Attorney ID No. 83362
11 Bala Ave
Bala Cynwyd, PA 19004
610-664-5200 Ext 104
Fax: 888-238-1334
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

SHERMAN HART
1062 Cecil Ave
Louisville, KY 40211

Plaintiff,
v.

GERALD J POMERANTZ, ESQ.
21 South 12th Street Floor 7
Philadelphia PA 19107

and

**GERALD JAY POMERANTZ &
ASSOCIATES, P.C.**
21 South 12th Street Floor 7
Philadelphia PA 19107

Defendants.

No.

**JURY OF TWELVE (12) JURORS
DEMANDED**

PARTIES, VENUE and JURISDICTION

1. Plaintiff, Sherman Hart, is an adult individual residing at the above captioned address.
2. Defendant Gerald Pomerantz, Esquire (hereinafter "Pomerantz"), is an attorney licensed to practice in Pennsylvania, and at all times relevant hereto was a shareholder and/or principal of Defendant Gerald Jay Pomerantz & Associates, P.C., with an address set forth above.
3. Defendant Gerald Jay Pomerantz & Associates, P.C., is a professional corporation incorporated in with an address set forth above.

4. Jurisdiction in this Honorable Court is based on a violation of federal law conferred by 28 U.S.C §1331 and diversity is conferred by 28 U.S.C. §1332; supplemental jurisdiction over state law claims is granted by 28 U.S.C §1367.
5. Venue lies in this district in that the events giving rise to this claim occurred here, at least one (1) Defendant resides, maintains a principal place of business, and/or does business here, and/or the property which is the subject of this action is situated within this district.

OPERATIVE FACTS

6. In 2014, Plaintiff Sherman Hart was an employee of The Coca-Cola Company working in Philadelphia.
7. On October 22, 2014, Plaintiff sustained an injury while in the course and scope of his employment for the employer. Plaintiff suffered back and leg injuries as a result of this workplace injury.
8. On the same day, Plaintiff went to the emergency room at Aria Health Frankford—where the examining doctor concluded that he had suffered a back strain (and prescribed medications for pain and muscle spasms for Plaintiff). Copy of discharge instructions attached hereto as **Exhibit “A”**.
9. At all times relevant, Defendant, Gerald J. Pomerantz & Associates, P.C., acted by and through its agent, Defendant, Pomerantz.
10. Pomerantz undertook representation of Plaintiff with regard to injuries sustained in Plaintiff’s workplace accident on October 22, 2014. Upon information and belief, the representation agreement is in Defendants’ possession.
11. On December 4, 2014, the employer issued a Notice of Compensation Payable, accepting liability for a “lumbar sprain/strain” and pursuant thereto Plaintiff began receiving

12. The benefits received totaled \$277.35 for missed pay and \$1203.94 for the costs of some physical therapy appointments.
13. On December 5, 2014, the employer terminated Plaintiff's employment.
14. After Plaintiff was terminated, Plaintiff sought treatment from the employer's onsite medical facility regarding the work injury, but was denied this treatment because he no longer had access as an employee.
15. On March 27, 2015, the employer filed a petition to suspend Plaintiff's compensation benefits, alleging that as of October 23, 2014, Plaintiff had returned to work without a wage loss.
16. On May 27, 2015, Plaintiff was deposed in Pomerantz's law offices by the employer's attorney, in lieu of live testimony at trial. Copy of Plaintiff's deposition attached hereto as **Exhibit "C"**.
17. Plaintiff testified that while he continued to suffer from his back injury, Pomerantz had not referred him to any physicians. **Exhibit C**, p. 20.
18. On June 3, 2015, Dr. Christian Fras, MD (hereinafter "Dr. Fras") performed an Independent Medical Evaluation of Plaintiff. During this evaluation, Dr. Fras did not review any diagnostic or imaging studies of Plaintiff's back injuries, nor did he perform a physical examination of Plaintiff's condition. Dr. Fras's evaluation of Plaintiff consisted solely of asking Plaintiff a few questions, and stating that he could not check Plaintiff.
19. On July 9, 2015, there was a hearing on the employer's petition to suspend compensation benefits. Despite having undertaken representation of Plaintiff months prior, Pomerantz had not entered his appearance before the court at this time. Pomerantz failed to attend this hearing.

20. On July 13, 2015, Pomerantz entered his notice of appearance with the judge as representing Plaintiff regarding the suspension and termination of Plaintiff's compensation benefits. Notice of Appearance attached hereto as **Exhibit "D"**.
21. On July 16, 2015, the employer filed a petition to terminate benefits based on the medical opinion of Dr. Fras, who opined that Plaintiff had fully recovered from his work related injuries as of June 3, 2015.
22. Plaintiff suffered pain from continuing nerve damage to his back resulting from his work-related injury, and continued to require medical treatment and rehabilitation.
23. On July 23, 2015, Dr. Lawrence Goren, MD was deposed by employer's attorney in lieu of his live trial testimony before the workers' compensation judge. Copy of Goren's deposition attached hereto as **Exhibit "E"**.
24. A notice of this deposition had been sent to Pomerantz, dated July 8, 2015. *See Exhibit E*, ex. "D-Goren-1". Pomerantz called employer's attorneys the morning of the deposition to indicate that he would not be attending, and that he did not want to participate by phone, but that they should proceed as scheduled. **Exhibit E**, p. 3.
25. On September 25, 2015, Dr. Fras was deposed by employer's attorney in lieu of his live testimony before the workers' compensation judge. Copy of Fras's deposition attached hereto as **Exhibit "F"**.
26. Despite having received notice of this deposition, Pomerantz contacted the employer's attorneys earlier in the week to inform them that he would not be participating in Dr. Fras's deposition. **Exhibit F**, p. 4. Pomerantz failed to attend Dr. Fras's deposition. *Id.* at 2.
27. On October 21, 2015, the record closed for admitting evidence regarding the suspension and termination of Plaintiff's compensation benefits. While the record contained four witnesses

and five exhibits presented by the employer, Pomerantz had only presented evidence in the form of Plaintiff's own testimony.

28. Prior to the record closing, Plaintiff had told Pomerantz about witnesses who could have supported Plaintiff's testimony, but Pomerantz failed to present this evidence.
29. Whenever Plaintiff told Pomerantz about Plaintiff's difficulties in obtaining medical treatment or prescriptions for treatment from Coca-Cola, Pomerantz encouraged Plaintiff to keep waiting because "it takes time."
30. During Pomerantz's representation of Plaintiff, Plaintiff tried to obtain medical treatment. Because Pomerantz failed to help Plaintiff find treatment and have it covered by worker's compensation, Plaintiff was constrained to pay out of pocket for treatment. Plaintiff had to travel multiple times down to Louisville, Kentucky, where his family lives and where Plaintiff was able to see a massage therapist who treated Plaintiff at a discount because of a friend's referral.
31. January 19, 2016 was the deadline for Pomerantz to file claimant's brief on Plaintiff's behalf. Pomerantz failed to file any brief on Plaintiff's behalf, and missed the deadline. *See* copy of Dispute History—Briefs, attached hereto as **Exhibit "G"**.
32. On April 1, 2016, Plaintiff sent Pomerantz a letter releasing Pomerantz as Plaintiff's legal counsel. Copy of Notice of Release of Legal Counsel attached hereto as **Exhibit "H"**.
33. In this letter, Plaintiff explained that it had "become harder to communicate with [Pomerantz] resulting in [Plaintiff] feeling that [their] client and lawyer relationship has come to an end." **Exhibit H**.
34. Plaintiff engaged the legal services of John E. Steiner, Esquire, to take over representation of Plaintiff in regard to contesting the termination of Plaintiff's compensation benefits.

Steiner entered his appearance on Plaintiff's behalf on April 21, 2016. However, because Pomerantz had already let the record close, Plaintiff was unable to introduce further evidence supporting his claim.

35. Steiner referred Plaintiff to Dr. Frederick Lieberman, an orthopedic surgeon in Philadelphia. On April 27, 2016, Plaintiff had an initial evaluation with Dr. Lieberman, who recommended that Plaintiff obtain electrodiagnostic and imaging studies to ascertain the extent of the damage to his back.
36. On May 8, 2016, Plaintiff had an MRI of his lumbar spine performed at Advanced Diagnostics. This MRI revealed protrusions and herniations in Plaintiff's spine.
37. On May 10, 2016, Plaintiff underwent electrodiagnostic testing on his back. This testing revealed nerve damage in Plaintiff's back that was consistent with the timing of his work injury of October 22, 2014.
38. On May 18, 2016, Plaintiff had a follow-up evaluation with Dr. Lieberman. After examining, observing and speaking with Plaintiff, Dr. Lieberman's impression was that Plaintiff was "increasingly symptomatic with multiple herniated/protruding discs and a multilevel radiculopathy." Dr. Lieberman outlined a treatment plan of increasing Plaintiff's dosage of Neurontin, prescribing a muscle relaxant, and adding more pain medication. Dr. Lieberman also advised Plaintiff to get "an anesthesia consult regarding lumbar epidural corticosteroid injections." The report concludes: "He remains not fit for duty. He should continue with his course of therapy."
39. In March 2016, Plaintiff went to see a chiropractor, who noted both objective and subjective evidence of back pain in Plaintiff.
40. During the hearing to terminate Plaintiff's compensation benefits, Plaintiff was found to

have been terminated for cause and Plaintiff's compensation benefits were therefore suspended as of December 6, 2014.

41. Plaintiff was also found to have effectuated a full recovery from his employment injury, and his compensation benefits were therefore terminated as of June 3, 2015.
42. The judge's decision and order suspending and terminating Plaintiff's compensation benefits was dated October 22, 2016. This decision noted that Plaintiff had not admitted any medical evidence indicating that still required treatment for his employment injury. The decision also noted that Plaintiff had failed to contradict the employer's evidence that Plaintiff was terminated for cause.
43. Pomerantz knew or should have known that Plaintiff continued to require medical testing, treatment and rehabilitation for his injuries.
44. Upon information and belief, in the course of Pomerantz's representation of Plaintiff, Pomerantz failed to help Plaintiff obtain medical testing, treatment, or rehabilitation for his injuries.
45. In the course of Pomerantz's representation of Plaintiff, Pomerantz failed to introduce evidence of Plaintiff's continued medical treatment and rehabilitation for his injuries.
46. Pomerantz knew or should have known of evidence tending to contradict the employer's evidence that Plaintiff was terminated for cause.
47. In the course of Pomerantz's representation of Plaintiff, Pomerantz failed to introduce evidence indicating that Plaintiff was not terminated for cause.
48. Because Pomerantz failed to introduce evidence on Plaintiff's behalf, Plaintiff lost his worker's compensation benefits, both for lost wages and for medical treatment.

COUNT I
LEGAL MALPRACTICE/ SIMPLE NEGLIGENCE/ PROFESSIONAL NEGLIGENCE

49. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.
50. By entering into an attorney-client relationship with Plaintiff, Defendants undertook a duty of care towards Plaintiff.
51. As more fully set forth above, Defendants failed to render legal services to Plaintiff in accordance with the standard of care required of attorneys.
52. As a direct and proximate result of Defendants legal malpractice as aforesaid, Plaintiff was harmed and suffered significant damages, as well as other consequential and incidental damages.
53. Defendants knew or should have known that their actions and omissions aforesaid had an extremely high degree of probability of causing harm to Plaintiff.
54. Defendants acted in reckless indifference to the consequences of their actions and omissions aforesaid, meriting the imposition of punitive damages against them.

COUNT II
BREACH OF FIDUCIARY DUTY

55. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.
56. Plaintiff and Defendants had a fiduciary relationship.
57. Defendants breached their fiduciary duties owed to Plaintiff, as more fully set forth above, and also acted in violation of the Pennsylvania Rules of Professional Conduct.
58. As a direct and proximate result of Defendants' breach of fiduciary duty aforesaid, Plaintiff has been harmed and continues to be harmed, and has incurred significant damages, as well as other consequential damages.
59. Defendants knew or should have known their actions and omissions as aforesaid had an extremely high degree of probability of causing harm to Plaintiff.

60. Defendants acted in reckless indifference to the consequences of their actions.

COUNT III
BREACH OF CONTRACT/COVENANT OF GOOD FAITH AND FAIR DEALING

61. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.

62. Plaintiff and Defendants entered into a contract for legal services.

63. Defendants' aforementioned conduct constitutes a breach (express, implied, or as a matter of law) of that agreement to provide competent and effective legal services, as well as a breach of the covenant of good faith and fair dealing.

64. As a direct and proximate cause of the aforesaid (incorporated by references), Plaintiff has been damaged (as set forth above).

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants, for an amount in excess of \$75,000.00, plus interest, costs of suit, punitive damages, plus other relief which this Honorable Court deems necessary and just, including injunctive relief.

Respectfully Submitted,

WEISBERG LAW

BY: /s/ Matthew Weisberg
MATTHEW B. WEISBERG, ESQ

DATED: 11-2-17

SCHAFKOPF LAW, LLC

BY: Gary Schafkopf
GARY SCHAFKOPF, ESQ

DATED: 11-02-17

EXHIBIT A

ED Documents - Copy of Electronic Original



Aria Health Frankford
4900 Frankford Avenue
Philadelphia, PA 19124
215-831-2000

Discharge Instructions

Patient: HART, SHERMAN

DOB: 12/9/1982

01318923/14896690

Date Printed: 10/22/2014 5:01:57 AM

Allergies: shellfish No Known Drug Allergies

We are pleased to have been able to provide you with Emergency Care here at ARIA Health. Please review these instructions again at home in detail as described to you in order to better understand your diagnosis and the necessary further treatment and precautions related to your condition.

This is the team who cared for you during your emergency room visit:

ED Attending Physician: Jovettz Tereshchenko,
Nadla

You are being discharged today with diagnosis(s) :

Discharge Diagnosis: Lumbar strain

Follow Up Appointments:

Additional Follow Up Info: worker's comp upon being discharged

No one deserves to be abused. If you need help, Please call 1-800-220-8116

If you need a family doctor or specialist in your neighborhood, call 1-(877)-808-ARIA or 1-(877)-808-2742

Activity Patient has no restrictions related to Driving, Stairs, Walking, Lifting, Sexual activity or
Restrictions: Bathing.

General Instructions:

Take your discharge instructions and all of your medicines to your follow up appointment.

Please take all of your medicine as instructed.

Please return to the Emergency Department if you have any further concerns or problems.

Procedures performed during your emergency visit:

No procedures performed

Immunization provided during your emergency visit:

No immunizations provided

Medications received during your emergency visit:

No medications received

Medication List

Please continue to take these medications as prescribed and follow up with your Family Doctor. If you do not have a Physician please get a Primary Care Physician ASAP.

albuterol orally

These are the NEW medications, equipment and studies the emergency room physician has prescribed.

cyclobenzaprine 5 mg oral tablet 1 tab(s) orally 3 times a day as needed for muscle spasm

ketorolac 10 mg oral tablet 1 tab(s) orally 4 times a day, As Needed - as needed for pain

Requested By: Tekwanl. Ronnekha (Scribe)
10/22/14 05:01

Printed From : Zone 2
Page 1



EXHIBIT B

pennsylvaniaDEPARTMENT OF LABOR & INDUSTRY
BUREAU OF WORKERS' COMPENSATION**NOTICE OF COMPENSATION
PAYABLE**

DATE OF NOTICE

1 2 - 0 4 - 2 0 1 4
MM DD YYYY

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER

4 0 6 - 1 9 - 8 1 1 5

DATE OF INJURY

1 0 - 2 2 - 2 0 1 4
MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name Sherman

Last name Hart

Date of birth 12/09/1982

Address PO Box 16591

Address

City/Town Philadelphia State PA ZIP 19122

County Philadelphia

Telephone 2156708603

INJURY INFORMATION

Part of body injured Lumbar

Nature of injury Sprain/strain

Accident/Injury description narrative EE BENT DOWN TO PICK
UP A CASE FOR THE PALLET THAT HE WAS BUILDING.Check if occupational disease ☐**EMPLOYER**

Name The Coca-Cola Company

Address 801 EAST ERIE AVENUE

Address

City/Town PHILADELPHIA State PA ZIP 19134

County PHILADELPHIA

Telephone 2154274500 FEIN 230969220

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name Sedgwick CMS

Address P.O. Box 37726

Address

City/Town Philadelphia State PA ZIP 19101

County Philadelphia

Telephone 2152313900 FEIN 362885608

Contact Kimberly Kucher

NAIC code

or Insurer code 2109

Insurer/TPA claim # 30142951569-0001

NOTICE TO EMPLOYER: This Notice should be clearly completed, (preferably typed) and filed with the Bureau. Filing with the Bureau by electronic batch upload in WCAIS, by electronically attaching the document to a claim in WCAIS, or by mail. A copy must be sent to the injured employee with the first payment of compensation.

NOTICE TO EMPLOYEE: If any questions arise regarding these payments, contact the representative named at the bottom of this Notice. If you cannot resolve a problem with the employer representative, you may call the Bureau at 800-482-2383.

Compensation is payable as follows:

- ☐ Check only if compensation for medical treatment (medical only, no loss of wages) will be paid subject to the Workers' Compensation Act. Compensation for medical treatment is payable from date of injury.
- ☐ For compensation for medical treatment only, you should not complete numbers 1 through 5.

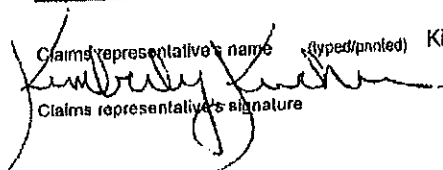
- Weekly compensation rate \$ 6 4 2 1 1 3 Based on an average weekly wage of \$ 9 6 3 1 4
 - Payments begin on 1 0 - 2 7 - 2 0 1 4 (Compensation for loss of wages is payable for first 7 days only if disability extends 14 or more days; compensation for medical treatment is payable from the date of injury.)
MM DD YYYY
 - Date first check mailed 1 2 - 0 3 - 2 0 1 4 If the date exceeds the 21-Rule, check this box ☐ and explain on back of this form.
MM DD YYYY
 - Payments will hereafter be made: ☒ Weekly ☐ Biweekly ☐ Other (Specify):
- Any termination, suspension or modification of these payments must be made by agreement, final receipt, administrative or judicial determination, or as otherwise provided in the Workers' Compensation Act or Regulations of the Department.

(OVER)

5. If injury involves loss under Section 306(c) (except for disfigurement of the head, face or neck) and employee has returned to work, complete the following information.

- (a) Compensation is payable for _____ weeks _____ days for loss or loss of use of _____
- (b) Employee returned to work without loss of income on _____ MM _____ DD _____ YYYY
- (c) Healing period payable for _____ weeks _____ days (Up to (b) above and subject to 7-day waiting period)
- (d) Total (a) and (c) payable _____ weeks _____ days.
- (e) Credit taken for disability benefits paid \$ _____

6. Remarks

Claims representative's name (typed/printed) Kimberly Kucher
 Claims representative's signature 

Telephone 2152313900

COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF LABOR & INDUSTRY
 BUREAU OF WORKERS' COMPENSATION
 1171 S. CAMERON STREET, ROOM 103
 HARRISBURG, PA 17104-2501
 (TOLL FREE) 800.482.2383

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information
 Services
 717.772.3702

Claims Information Services
 toll-free inside PA: 800.482.2383
 local & outside PA: 717.772.4447

Hearing Impaired
 toll-free inside PA TTY: 800.362.4228
 local & outside PA TTY: 717.772.4991

Email
 ra-ti-bwc-helpline@pa.gov



Auxiliary aids and services are available upon request to individuals with disabilities.
 Equal Opportunity Employer/Program

EXHIBIT C

Sherman Hart

Hart vs. Philadelphia Coca-Cola

May 27, 2015

1 COMMONWEALTH OF PENNSYLVANIA
 2 DEPARTMENT OF LABOR AND INDUSTRY
 3 BUREAU OF WORKERS' COMPENSATION
 4 OFFICE OF ADJUDICATION
 5 BUREAU CLAIM NO. 7417594

6 - - - - -

7 SHERMAN HART :

8 - VS - :

9 PHILADELPHIA COCA-COLA:

ORIGINAL

10 - - - - -

11 Wednesday, May 27, 2015

12 - - - - -

13
 14 Oral deposition of SHERMAN
 15 HART, held in the offices of Gerald Jay
 16 Pomerantz, 21 South 12th Street, beginning
 17 at 11:00 a.m., before Jen Szombathy, a
 18 Certified Professional Reporter.

19

- - - - -

20 Brusilow & Associates
 Court Reporters & Videographers
 21 255 South 17th Street
 Philadelphia, Pennsylvania 19103-6298
 22 215.772.1717

- - - - -

23

24

May 27, 2015

Page 2

1 APPEARANCES

2 GERALD JAY POMERANTZ

BY: GERALD JAY POMERANTZ, ESQUIRE

3 Stephen Girard Building

21 South 12th Street

4 7th Floor

Philadelphia, Pennsylvania 19107

5 (215) 569-8866

Counsel for the Plaintiff

6

7 ANTHONY J. BILOTTI & ASSOCIATES, LLC

BY: ELIZABETH G. GEE, ESQUIRE

8 1400 N. Providence Road

Suite 4035

9 Media, Pennsylvania 19063

(484) 444-4400

10 Counsel for the Defendant

11 - - - - -

12

13

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24

Sherman Hart

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1 INDEX
2 WITNESS: Sherman Hart

3 EXAMINATION

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7 By Mr. Pomerantz 39

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9 EXHIBITS

10	NO.	DESC.	PAGE
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11	D. Hart-2	Corrective Action Form	28
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12	D. Hart-4	Corrective Action Form	28
	D. Hart-5	Corrective Action Form	28
13	D. Hart-5A	Corrective Action Form	28
	D. Hart-6	Corrective Action Form	34
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3

REQUEST FOR DOCUMENTS/ITEMS

4

PAGE

LINE

5

6

7

8

QUESTIONS INSTRUCTED NOT TO ANSWER

9

PAGE

LINE

10

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- - - - -

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Page 5

1 - - -
2 PROCEEDINGS
3 - - -

4 (It is stipulated by and
5 between counsel for the respective
6 parties that sealing, filing and
7 certification are waived and that all
8 objections, except as to the form of
9 the question, are reserved until the
10 time of trial.)

11 - - -
12 SHERMAN HART, after having
13 been first duly sworn, was examined
14 and testified as follows:

15 - - -
16 EXAMINATION
17 - - -

18 MS. GEE: We're here in the
19 matter of Sherman Hart versus
20 Coca-Cola. We're here at the offices
21 of Gerald Jay Pomerantz to take the
22 trial deposition of Mr. Hart in lieu
23 of his live testimony before a
24 workers' compensation judge. My name

Sherman Hart

Hart vs. Philadelphia Coca-Cola

May 27, 2015

Page 6

1 is Elizabeth Gee. I'm present on
2 behalf of Coca-Cola. Attorney
3 Pomerantz is present for the claimant.
4 Because this is a trial deposition,
5 all objections must be stated on the
6 record and all reasons for objections
7 must be stated on the record as well.
8 The objection must be properly
9 preserved in writing in accordance
10 with the special rules or it will be
11 deemed waived.

12 Is that all agreeable to you?

13 MR. POMERANTZ: Read and sign.

14 BY MS. GEE:

15 Q. Will you please state your name for
16 the record.

17 A. Sherman Hart.

18 Q. What is your current address?

19 A. 1513 Adams Avenue.

20 Q. Is that in Philadelphia?

21 A. Yes.

22 Q. How old are you?

23 A. 32.

24 Q. With whom do you live?

Sherman Hart

Hart vs. Philadelphia Coca-Cola

May 27, 2015

Page 7

1 A. My cousin.

2 Q. And how old is your cousin?

3 A. 33 I think.

4 Q. Do you have any children?

5 A. Yes.

6 Q. How old are they or he or she?

7 A. One and six.

8 Q. Who is your primary care physician
9 or your family doctor?

10 A. The family doctor I have is in my
11 hometown Louisville, Kentucky. Here I don't
12 really have a doctor. Every now and then I
13 would see -- his name is -- it starts with a P.
14 I forget how to pronounce it.

15 Q. Do you know where that doctor is
16 located?

17 A. He is on Lehigh and Front.

18 Q. Is that an Aria Hospital?

19 A. No, it's private practice.

20 Q. What pharmacy do you typically use
21 to fill your prescriptions, if you have any?

22 A. No.

23 Q. Did you ever injure your lower back
24 prior to October 22, 2014?

May 27, 2015

Page 8

1

A. I was in a car accident before and

2

I hurt my back.

3

Q. When was that car accident?

4

A. I want to say January, February

5

2012.

6

Q. What injury did you sustain in that

7

car accident?

8

A. It was a back spasm.

9

Q. Lower back?

10

A. Yes.

11

Q. Anywhere else?

12

A. My knee.

13

Q. Which knee?

14

A. Right knee. Didn't sustain a

15

serious injury.

16

Q. Did you treat with any doctors or

17

go to a hospital after that?

18

A. Yes, I went to a hospital and I had

19

chiropractic care.

20

Q. What hospital did you go to?

21

A. Aria Frankford I believe.

22

Q. Do you remember the name of the

23

chiropractor that you saw?

24

A. It was on Frankford, too. I can't

May 27, 2015

Page 9

1 remember the name.

2 Q. How long did you see that
3 chiropractor?

4 A. Around six months maybe.

5 Q. When did that treatment end?

6 A. It ended probably around maybe May,
7 June maybe.

8 Q. Of 2013?

9 A. '12.

10 Q. Did you get any diagnostic studies,
11 meaning x-rays, MRI, CAT scans following that
12 car accident?

13 A. I think I got a scan. I don't
14 remember what treatment.

15 Q. Is that at the hospital?

16 A. Yes.

17 Q. Were you prescribed any medication
18 in relationship to that car accident?

19 A. Yes.

20 Q. What were you prescribed?

21 A. I think it was called Oxycodone or
22 something and another painkiller medicine.

23 Q. Are you still taking those from
24 that car accident?

Sherman Hart

Hart vs. Philadelphia Coca-Cola

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Page 10

1 A. No.

2 Q. You were hired by Coca-Cola August

3 14, 2012.

4 Does that sound right?

5 A. Yes.

6 Q. What were you hired as?

7 A. Laborer.

8 Q. Can you describe some of your job

9 duties?

10 A. Order building, lifting sodas,

11 driving the forklift.

12 Q. You're mostly in the warehouse?

13 A. Yes, all warehouse.

14 Q. How far did you go in school?

15 A. Bachelor's degree.

16 Q. What is your bachelor's in?

17 A. Film and media arts.

18 Q. Where did you go to college?

19 A. Temple.

20 Q. And you got that degree already?

21 You finished?

22 A. Yes.

23 Q. When did you graduate?

24 A. May 2012.

Sherman Hart

May 27, 2015

Page 11

1 Q. Prior to working at Coca-Cola,
2 where did you work?

3 A. I worked for another factory in
4 Louisville, Kentucky.

5 Q. Was that another warehouse job?

6 A. Yes.

7 Q. How long did you work there?

8 A. Off and on for probably since -- I
9 want to say 2004.

10 Q. 2004. And when did you stop that
11 job?

12 A. I would say 2010 was the last time
13 I worked there.

14 Q. Is that because you came to Philly
15 for school?

16 A. Yes. I go back often to Louisville
17 so I would work any time I was in Louisville.

18 Q. Now, prior to October 22, 2014, had
19 you ever had any workers' compensation claims
20 before?

21 A. No.

22 Q. Now, besides the car accident that
23 we previously talked about, have you ever had
24 any other diagnostic studies for anything else?

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Page 12

1 A. No.

2 Q. That work accident, you were
3 involved in a personal injury claim; is that
4 correct?

5 A. Yes.

6 Q. That's completed? That's finished,
7 right?

8 A. What's finished?

9 Q. That lawsuit you had been involved
10 in.

11 A. What lawsuit?

12 Q. Were you involved in a lawsuit
13 related to that car accident?

14 A. Yes, I guess it was a lawsuit, yes.

15 MR. POMERANTZ: Objection to
16 the form of the question. I don't
17 believe a suit was filed.

18 THE WITNESS: I was the
19 passenger in the car and I guess they
20 had a lawyer and they referred me to
21 that lawyer, but the chiropractor I
22 was seeing, so I guess it was a
23 lawsuit.

24 BY MS. GEE:

May 27, 2015

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1 Q. You're not doing anything related
2 to that anymore?

3 A. No.

4 Q. Had you had any other accidents or
5 slips and falls prior to the work injury?

6 A. No.

7 Q. Besides the car accident we talked
8 about, have you ever treated for your low back
9 on any other occasion?

10 A. No.

11 Q. Now, while working for Coca-Cola
12 you took FMLA leave?

13 A. Yes.

14 Q. And you took various periods of
15 intermittent leave, right?

16 A. Yes, when my son was born.

17 Q. That was for your son being born?

18 A. Yes.

19 Q. Did you take FMLA for anything else
20 other than your son being born?

21 A. I have asthma so I had leaves on
22 asthma days.

23 Q. You were approved for intermittent
24 FMLA for the period of October 13, 2014 through

May 27, 2015

Page 14

1 April 12, 2015; is that right?

2 A. Yes.

3 Q. Was that for asthma?

4 A. Yes.

5 Q. What doctor filled out that
6 paperwork for you?

7 A. The same doctor on Lehigh.

8 Q. And you think his name starts with
9 a P?

10 A. Yes. I can't pronounce it. I
11 forget.

12 Q. How often would you have to go out
13 of work for your asthma?

14 A. Per week, per month?

15 Q. Maybe once a week, once a month?

16 A. Maybe two, three times a month.

17 Q. Did you ever have to miss work for
18 the car accident?

19 A. No, that was before I started.

20 Q. I'm going to turn your attention to
21 October 22, 2014.

22 You were injured at work, correct?

23 A. Yes.

24 Q. Can you tell me what happened.

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Page 15

1 A. Yes, I was doing the normal lifting
2 of my soda cases. As I was picking up a case of
3 soda to put on the pallet, my foot was caught in
4 the plastic. And as I was turning to put the
5 soda on the pallet, I twisted my back and the
6 case and my foot got caught in the plastic.

7 Q. Did you go to the hospital after
8 that?

9 A. Yes.

10 Q. Did you go immediately?

11 A. Yes.

12 Q. You went to Aria, right?

13 A. Yes.

14 Q. Now, what did they do for you at
15 Aria?

16 A. They gave me some medication and
17 she checked my back, said I had some spasms.

18 Q. Now, did they take any x-rays or
19 MRIs?

20 A. Not that I remember, no.

21 Q. Did you return to work after you
22 were seen at Aria?

23 A. I brought my paperwork back to the
24 job, then I went home.

May 27, 2015

Page 16

1 Q. Were you seen by a doctor at
2 Coca-Cola's facility?

3 A. Like a month later, yes. I seen
4 the nurse that was there on vacation probably
5 the next following week, like five days later.

6 Q. When you went to the work doctor or
7 nurse, what did they do for you?

8 A. They gave me some medication and
9 she set me up with the chiropractor up the
10 street from the job.

11 Q. And what was the name of that
12 chiropractor?

13 A. I'm not sure of the name. I think
14 I have it in the paperwork. Do you have the
15 paper with the name on it? NovaCare, that's it
16 on the next one.

17 Q. Now, when you first saw the work
18 doctor, you were released to modified duty work,
19 correct?

20 A. Yes.

21 MR. POMERANTZ: Objection to
22 the form of the question.

23 MS. GEE: This is cross.

24 BY MS. GEE:

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Page 17

1 Q. Did you immediately go back to
2 work?

3 A. I went to light duty modified.

4 Q. When did you start work again?

5 A. I believe the next day I went to
6 work at 6 p.m., that shift, then I had off two
7 days, then I went back that Monday. That's when
8 I spoke with the nurse.

9 Q. So you did continue working in a
10 modified capacity?

11 A. Yes.

12 Q. You were able to do that?

13 A. Yes.

14 Q. And did you periodically follow up
15 with the work doctor?

16 A. With the nurse. I only seen the
17 doctor one time.

18 Q. And they sent you to physical
19 therapy?

20 A. Yes.

21 Q. And you did go to that physical
22 therapy?

23 A. Yes.

24 Q. How often did you go?

May 27, 2015

Page 18

1 A. Three times a week, sometimes four.

2 Q. For how long?

3 A. All the way up until late December.

4 I don't know the date. Until I didn't get a new
5 prescription for it.

6 Q. Now, you were supposed to go back
7 to that facility on December 17, 2014, correct?

8 A. To what facility?

9 Q. To the work doctor or work nurse.

10 A. Yes.

11 Q. You did not go to that appointment?

12 A. She wasn't there. I called to
13 reschedule and I couldn't get a hold of her.
14 And at that time I couldn't get in the building
15 because I got fired.

16 Q. At any point were you working full
17 duty after the work injury?

18 A. No.

19 Q. Have you treated with any other
20 doctors besides the ones we've talked about for
21 this injury?

22 A. I seen a chiropractor in my city
23 when I was there. A family friend chiropractor
24 that showed me some exercises I could do to help

May 27, 2015

Page 19

1 me since I'm unable to get a hold of their
2 chiropractor anymore.

3 Q. That was in Kentucky?

4 A. Yes.

5 Q. What is the name of that?

6 A. I wouldn't know the name of the
7 facility.

8 Q. Do you know the name of the
9 chiropractor?

10 A. I forget his name. I can probably
11 get it. It was from a family friend. He did it
12 off the record for me.

13 Q. He showed you some exercises?

14 A. Yes.

15 Q. Are you still going back to this
16 person or do you plan on seeing this person
17 again?

18 A. No. At that time I was supposed to
19 have a vacation coming up already with the job
20 so I went down anyway. I already had a flight
21 to go there. When I was there since I was cut
22 off from here, I was trying to get some work
23 when I was there because my back was still
24 hurting.

May 27, 2015

Page 20

1 Q. Has your attorney referred you to
2 any doctors?

3 A. No.

4 Q. Are you currently treating for low
5 back?

6 A. No, I couldn't get set up with any
7 treatment. I kept calling the nurse and the
8 workmen's comp people.

9 Q. What are your current symptoms that
10 you relate to the work injury?

11 A. My lower back and I feel numbness
12 and sharp pain in my quad and going down my leg
13 and my calf.

14 Q. Is it just one leg or both?

15 A. Mainly the right leg. Every now
16 and then the left, but mainly the right leg
17 quad.

18 Q. Now, you stated you were terminated
19 from Coke, correct?

20 A. Yes.

21 Q. Are you currently working?

22 A. No.

23 Q. Have you looked for work at all
24 since being terminated?

May 27, 2015

Page 21

1 A. Yes.

2 Q. Where have you looked?

3 A. Numerous places.

4 Q. Can you give a few examples?

5 A. A couple of film terms in my major.

6 When I was first fired I looked at -- I forget

7 the name. It was through a temporary company.

8 I applied with those. And then I went to a

9 couple of job fairs that Temple held.

10 Q. You do feel like you're able to
11 work?

12 A. Not the same capacity I worked like
13 Coke. I'm looking for something I can sit down
14 and something in my major. I'm unable to do
15 that physical all the time.

16 Q. Have you received any income or
17 wages since the date of injury besides your
18 wages that you earned when you returned to work
19 from any other sources?

20 A. No.

21 MR. POMERANTZ: Does that
22 include unemployment?

23 MS. GEE: I'll break it down.

24 I'll ask that now.

May 27, 2015

Page 22

1 BY MS. GEE:

2 Q. Have you received unemployment
3 compensation?

4 A. Yes.

5 Q. And what period of time did you
6 receive that?

7 A. Three months now.

8 Q. Are you still receiving it?

9 A. Yes.

10 Q. How much are you receiving?

11 A. I think 500.

12 Q. Per week?

13 A. Yes. It's biweekly. I think it's
14 500 a week.

15 Q. Describe what you do on a
16 day-to-day basis.

17 A. Day-to-day basis I try to do some
18 film editing every now and then, help my son
19 with his homework after school. Look for work
20 online. Usually in the house more now.

21 Q. Do you have any e-mails or anything
22 like that that kind of confirm any job
23 applications that you've sent?

24 A. I have online where I go to the web

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1 site for unemployment.

2 Q. If you have any verifications,
3 would you mind sending those to your attorney?

4 MR. POMERANTZ: I asked him
5 for them and he will send them and
6 I'll provide them.

7 MS. GEE: Thank you.

8 BY MS. GEE:

9 Q. Are you able to drive?

10 A. Yes.

11 Q. Are you able to do the cooking and
12 cleaning around the house?

13 A. No.

14 Q. You don't or you can't?

15 A. I try to limit certain cleaning. I
16 can't really lift.

17 Q. How about laundry?

18 A. No, I don't do that.

19 Q. Do you have any hobbies?

20 A. No.

21 Q. Do you participate in any sports or
22 go to the gym at all?

23 A. I used to.

24 MR. POMERANTZ: Now or

Sherman Hart

Hart vs. Philadelphia Coca-Cola

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Page 24

1 previously?

2 MS. GEE: Now.

3 THE WITNESS: Not able to. I
4 used to go to the gym like three, four
5 times a week. I had to cancel my
6 membership.

7 BY MS. GEE:

8 Q. Is that because of the work injury?

9 A. Yes.

10 Q. Now, you were subject to corrective
11 actions for certain violations of policy while
12 employed at Coke, correct?

13 A. Yes.

14 Q. And how that would work you would
15 receive a couple verbal warnings, then you would
16 get written warnings and progressively you had a
17 certain number of shots, shall I say?

18 MR. POMERANTZ: Objection to
19 form. You can answer.

20 THE WITNESS: I would say yes.

21 BY MS. GEE:

22 Q. You received several warnings for
23 taking excessive breaks and not notifying your
24 supervisors that you were leaving to take

1 breaks, correct?

2 A. No. Say that again, they gave me
3 excessive what?

4 Q. Excessive breaks or unscheduled
5 breaks. Did you receive corrective actions for
6 those?

7 A. Yes, we have breaks when the system
8 goes down. We're supposed to break out on our
9 headsets. So I wouldn't agree it's excessive.
10 That's out of my control.

11 Q. And you received some corrective
12 actions for swiping under incorrect codes or
13 codes you weren't assigned?

14 A. One supervisor I wasn't working
15 with could say that, but my supervisor I work
16 with tells me to swipe under certain functions.

17 Q. Even if you don't agree with the
18 violations, they were documented, correct?

19 A. Yes, I guess.

20 MS. GEE: I'm going to show
21 you what I'll have marked as D.

22 Hart-1.

23 (Exhibit D. Hart-1 is marked
24 for identification.)

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1 BY MS. GEE:

2 Q. Could you take a look at that,
3 please.

4 A. How is that excessive? It's 12
5 hours.

6 MR. POMERANTZ: I read it.
7 And I believe there's a question on
8 the table.

9 BY MS. GEE:

10 Q. Do you remember getting these
11 various written reprimands that are documented
12 on this?

13 MR. POMERANTZ: Objection to
14 the form of the question. It's one
15 bargaining unit corrective action
16 form.

17 MS. GEE: I can give you all
18 of them.

19 MR. POMERANTZ: If there are
20 multiples, we'd like to see them so we
21 can answer the question.

22 MS. GEE: Sure.

23 MR. POMERANTZ: Can we have
24 these marked in sequential order

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1 dates, then we can go through them.

2 MS. GEE: The first one I have
3 is dated 6/16/2014. We'll remark that
4 previous exhibit.

5 MR. POMERANTZ: First written
6 reprimand, is that the one?

7 MS. GEE: I have 6/16 as the
8 discussion counseling coaching.

9 MR. POMERANTZ: There is no
10 case number. There's a check mark in
11 discussion counseling coaching.

12 MS. GEE: We'll do that as D.
13 Hart-1. As D. Hart-2. I have where
14 it's checked off written record of
15 verbal warning 9/28/2014.

16 MR. POMERANTZ: What I have
17 marked as D. Hart-1 says written
18 reprimand 10/5. Do I have the right
19 one?

20 MS. GEE: There's one before
21 that.

22 MR. POMERANTZ: Why don't we
23 go off the record.

24 (Discussion off the record.)

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1 (Exhibits D. Hart-2 through D.
2 Hart-5A are marked for
3 identification.)

4 BY MS. GEE:

5 Q. Now, Mr. Hart, you received on June
6 16, 2014 a, I guess they call it discussion
7 counseling coaching corrective action form for
8 failure to follow procedure and policy, correct?

9 A. Yes.

10 Q. Now, if you take a look at the
11 second page. It says, refused to sign.

12 Did you write that or did somebody
13 write that on your behalf?

14 A. Someone wrote that.

15 Q. Were you present?

16 A. Yes.

17 MR. POMERANTZ: Objection to
18 the form. Present for what, when it
19 was signed?

20 MS. GEE: Present when it was
21 signed.

22 THE WITNESS: It was already
23 signed before I came in usually. I
24 was present when they told me I had

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1 the write up.

2 BY MS. GEE:

3 Q. If you take a look at D. Hart-2.

4 This states you received a written record of
5 verbal warning on 9/28/2014, correct?

6 A. Yes.

7 Q. And the same thing on page 2 it
8 says, refused to sign.

9 Were you present when this -- you
10 did receive this form, correct?

11 A. Yes, I wasn't present when they
12 signed, but I received the paperwork, yes.

13 Q. And someone wrote refused to sign
14 on your behalf?

15 A. Yes.

16 Q. D. Hart-3, you received your first
17 written reprimand for improper procedure and
18 policy, correct?

19 A. Yes.

20 Q. And then you received this
21 paperwork, correct?

22 A. Yes.

23 Q. And again refused to sign.
24 Somebody wrote that for you?

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1 A. Yes.

2 Q. We'll look at D. Hart-4, it
3 indicates a second written reprimand on October
4 7, 2014, correct?

5 A. You said second for --

6 MR. POMERANTZ: If that's what
7 it says. She's asking you is that
8 what it says here.

9 THE WITNESS: Yes.

10 BY MS. GEE:

11 Q. Now, on page 2 of that document it
12 indicates that you were warned that future
13 infractions would result in progressive
14 disciplinary action, including termination,
15 correct?

16 MR. POMERANTZ: Where is that?

17 MS. GEE: It's going to be in
18 the second box.

19 MR. POMERANTZ: Okay.

20 BY MS. GEE:

21 Q. Did you receive that information or
22 warning?

23 A. I'm trying to remember this. I
24 don't even remember seeing this. No, I don't

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1 remember this one. I might have received this
2 one. I can't remember this one though. I
3 probably received it.

4 Q. I'll ask you to look at D. Hart-5.
5 It indicates a third written warning received on
6 October 22, 2014, correct?

7 A. Yes.

8 Q. That is the day of the work injury,
9 correct?

10 A. Yes, the injury day.

11 Q. And did you receive this before or
12 after you were injured at work?

13 A. That's what I'm saying. They
14 pre-sign and write it. I don't remember if I
15 got this before.

16 MR. POMERANTZ: Wait a second.
17 This is different than what I have
18 marked as D-5.

19 THE WITNESS: They are saying
20 two different things.

21 MR. POMERANTZ: One says third
22 and one says second and third. What I
23 have on the record is --

24 THE WITNESS: They have the

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1 same dates with different writing.

2 MR. POMERANTZ: Obviously I
3 object. I object to generally all of
4 these having --

5 THE WITNESS: I'm called in
6 the office almost every day.
7 Sometimes they do paperwork.

8 MR. POMERANTZ: They both say
9 October 22nd refused to sign 2014.
10 I'm going to call the one I had
11 previously marked as D. Hart-5, then
12 the next one should be D. Hart-5A.
13 What has been referred to by counsel
14 as D. Hart-5 is now marked as D.
15 Hart-5A. She hasn't asked you your
16 explanation yet. I think the question
17 is, did you receive it?

18 THE WITNESS: Yes.

19 MR. POMERANTZ: You received
20 both of them?

21 THE WITNESS: I received one I
22 remember. I don't remember getting
23 two with different writing. I don't
24 know which one I got.

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1 BY MS. GEE:

2 Q. Did you receive a corrective action
3 on October 22, 2014?

4 A. Yes.

5 Q. You do recall that, okay.

6 MR. POMERANTZ: I don't have
7 D. Hart-5 now because mine was used.

8 MS. GEE: It's in your packet
9 of records.

10 MR. POMERANTZ: What I have
11 marked as D. Hart-5 is marked D.
12 Hart-5A. I had previously marked it
13 pursuant to your question. So I can
14 make a copy of it. I prefer to have a
15 copy now. So let's go off the record
16 for a moment and I'll have a copy
17 made.

18 (Discussion off the record.)

19 BY MS. GEE:

20 Q. Now, in addition to these various
21 corrective action forms that we discussed --

22 MR. POMERANTZ: Objection to
23 the form of the question.

24 BY MS. GEE:

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1 Q. -- you also received corrective
2 actions for violating a cell phone policy; is
3 that right?

4 A. I received one.

5 MS. GEE: I'm going to hand
6 you another set of documents. We'll
7 mark this first one as D. Hart-6.

8 (Exhibits D. Hart-6 through D.
9 Hart-8 are marked for identification.)

10 BY MS. GEE:

11 Q. Now, D. Hart-6 that you have in
12 front of you, that's a corrective action form,
13 correct?

14 A. Yes.

15 Q. This form indicates that on January
16 6, 2014 you received a first written reprimand
17 for using your cell phone while working on that
18 date?

19 MR. POMERANTZ: The document
20 speaks for itself. There's no
21 objection.

22 THE WITNESS: Yes, I was on
23 break though.

24 BY MS. GEE:

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1 Q. Now, on page 2 somebody wrote
2 Sherman chose not to sign, correct? Looks like
3 John Lynn.

4 A. Yes.

5 Q. Now, if you turn back to the first
6 page it says on break at the time.

7 Is that something you wrote?

8 A. Yes.

9 Q. So you did receive this?

10 A. Yes.

11 Q. Now, turning your attention to D.
12 Hart-7. This indicates you received a second
13 written reprimand for the cell phone policy
14 again, violation of the cell phone policy on
15 October 6, 2014, correct?

16 A. No, I didn't receive this.

17 Q. You did not receive this?

18 A. No.

19 Q. Even though it says refused to
20 sign?

21 A. Yes.

22 Q. Turning your attention to D.
23 Hart-8. This form indicates you received a
24 third written reprimand on November 6, 2014,

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1 correct?

2 A. Yes.

3 Q. This indicates you had your cell
4 phone on the floor at work, correct?

5 A. No.

6 Q. It does not indicate that?

7 MR. POMERANTZ: She's not
8 asking you whether or not you agree
9 with it. She's asking you if that's
10 what it says. Read what it says.

11 THE WITNESS: Yes.

12 BY MS. GEE:

13 Q. Now, had you been aware that you
14 were not permitted to have your cell phone on
15 the floor of the warehouse?

16 MR. POMERANTZ: Objection to
17 the form of the question.

18 THE WITNESS: I was aware the
19 employee told the supervisor it's his
20 phone. And he seen I didn't have my
21 phone. When he asked to see my phone,
22 which was in my locker, I went to my
23 locker and showed him my phone, which
24 was red at the time. I asked him what

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1 color was my phone if you seen the
2 phone. He was behind us. He just
3 said I seen a light. Then when I said
4 what color is my phone. He said I
5 guess white. Then when I went to get
6 my phone out of the locker, then he
7 seen it was red, then he switched the
8 story. First he said he seen the cell
9 phone, then he said he saw the light.
10 The employee is telling you it's his
11 phone. Then when I went to my locker,
12 his employee tells me he said, why are
13 you going to help him out, why are you
14 trying to help him.

15 BY MS. GEE:

16 Q. Did you receive this corrective
17 action for a violation?

18 A. Yes, I received this.

19 Q. And this indicates on page 2 that
20 future infractions could result in progressive
21 disciplinary action including termination,
22 correct?

23 A. Yes.

24 MR. POMERANTZ: It says

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1 November 6th, not October 6th. It had
2 been changed. I pointed out so we can
3 clarify.

4 BY MS. GEE:

5 Q. After that third corrective action
6 dated November 6, 2014 you were terminated from
7 employment, correct?

8 MR. POMERANTZ: Objection to
9 the form of the question.

10 THE WITNESS: Can you repeat
11 it again?

12 BY MS. GEE:

13 Q. Were you terminated after receiving
14 this third corrective action?

15 A. Yes, in December.

16 Q. That was December 5, 2014?

17 A. Yes.

18 Q. And you filed a grievance for this
19 corrective action?

20 A. Yes.

21 Q. And that was denied, correct?

22 A. I guess it was. I didn't hear
23 nothing back from it. We just talked about it
24 and next thing I know I was fired. I didn't

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1 hear nothing about the grievance.

2 Q. Did you go in for a hearing or a
3 meeting?

4 A. Yes, I went in for a hearing. I
5 never heard nothing based on it until the day
6 they said I was fired for it.

7 MS. GEE: I have no further
8 questions. And I would attach D.
9 Hart-1 through D. Hart-8 to the
10 transcript.

11 MR. POMERANTZ: I have some
12 questions.

13 BY MR. POMERANTZ:

14 Q. Let's go to D. Hart-1. Mr. Hart,
15 could you explain why you refused to sign this?

16 A. I refused to sign --

17 Q. And is that your signature?

18 A. No, none of this is my signature.

19 Q. Can you explain with regard to D.
20 Hart-1 the reason for refusing to sign? Take
21 your time and read it over. It says, Sherman is
22 receiving a coaching for failure to follow
23 procedures and policies on June 15th. Sherman
24 was out of his work area and was in the

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1 cafeteria at 9:15 p.m. without notifying a
2 supervisor that he was leaving his work area.
3 This was outside of any scheduled breaks or
4 lunch. Any further violations of this procedure
5 and policy will result in further progressive
6 disciplinary actions. Can you explain why you
7 refused to sign?

8 A. Because I didn't agree with it.

9 Q. Why didn't you agree with it?

10 A. From my memory, I can remember I
11 believe this is when I went on break late. I
12 would get called in the office a lot during the
13 week. Some days they give written and some days
14 they don't.

15 Q. Give written what?

16 A. Written forms of these, corrective
17 actions. A lot times they don't give corrective
18 actions. They call you in there and talk to you
19 about the situation. So from this from my
20 knowledge of recalling on this date, I was in
21 the cafeteria, it's either a time I was on break
22 late or either I was in there getting a
23 Band-Aid. One time I remember I had to get some
24 first aid. And I told one supervisor but I

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1 didn't tell the other supervisor. So I'm like
2 if I told one, why do I need to tell two. I'm
3 not sure if this is this one or the other one.
4 It's been numerous times when you're called in
5 the office.

6 Q. When you say you went on break
7 late, can you explain that for the record.

8 A. Sometimes we have in the middle of
9 work and at the point of this time it's no bell
10 or no indication when it's break. The fact
11 you're not supposed to have a phone, you have to
12 guess. If I'm in the middle of a work order, I
13 don't know the time until I finish the work
14 order.

15 Q. When that occurs, what do you do
16 when it occurs and if you finish a work order
17 and it was already break time?

18 A. I usually go to break. That's what
19 I do every day. Numerous employees, we all do.
20 Some people go at this time, some go at that
21 time, some go early.

22 Q. Had that been discussed with
23 supervisors as to what you do when you're in the
24 middle of a loading job and it's break time?

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1 A. At one point they said that's why
2 they initiated having a bell ring. That went on
3 for a while, then they stopped the bell ringing.
4 It's a variation of time. There's no clear code
5 of when you're supposed to have the break if the
6 bell is not ringing all the time.

7 Q. Is there any kind of discussion
8 with respect to what you're entitled to if you
9 complete the loading job that you're working on?

10 A. No.

11 Q. Are you supposed to complete the
12 job if you're in the middle of a loading?

13 A. That's nothing that's written in
14 stone, whether we should or we shouldn't. Some
15 supervisors say go to break and leave the pallet
16 undone and some don't say anything about you
17 going. Then you have some when -- I say maybe
18 one day they might enforce and say everybody go
19 to break on time, forget the pallet, leave it.
20 Then when we start getting real busy, it's like
21 finish the pallet and then go. It's like an
22 unwritten rule.

23 Q. Were you ever told on occasion to
24 finish the pallet and then take your break?

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1 A. Yes.

2 Q. When you were told that, were you
3 told that you were entitled to a full break
4 time?

5 A. Yes.

6 Q. And is that one of the reasons why
7 you refused to sign that you were in violation?

8 A. Yes, because it's no definitive
9 answer for that. Sometimes it's okay.
10 Sometimes it's not. They didn't enforce this on
11 us. I'm just working and finishing the pallet
12 on time. If it's okay when it's summertime and
13 it's fast, when it's slow it's not okay, so.

14 Q. That was for D. Hart-1. D. Hart-2
15 says, Sherman is receiving a written record of
16 verbal warning for failure to follow procedure
17 and policy on September 28th. That was three
18 months after. Sherman was out of his work area
19 and in the cafeteria at 7:45 without notifying a
20 supervisor that he was leaving his work area.
21 He also improperly swiped under battery change
22 for more than 10 minutes. This was outside of
23 any scheduled breaks or lunch. Any further
24 violations of this procedure and policy will

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1 result in further progressive disciplinary
2 action.

3 You refused to sign for that?

4 A. Yes.

5 Q. Do you remember this violation?

6 A. Yes.

7 Q. Can you explain why you refused to
8 sign?

9 A. Yes, I refused to sign because
10 numerous occasions I had complained that my jack
11 wasn't working and the battery was dying.

12 Q. Is that on this particular date?

13 A. Yes, that date as well. But
14 previous before and they kept saying we're going
15 to talk to maintenance. And I write up every
16 day my battery is dying too fast, my machine is
17 not working, what can I do. One supervisor said
18 go under battery change, go charge it until it
19 gets charged full and come back. In the
20 meantime I'm looking for a new jack but we have
21 not enough equipment and more people than
22 equipment. So when mine breaks if it's a day
23 where everybody is at work and no miss, I don't
24 have a jack to get. So he was like charge it up

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1 and wait was what was told to me. And I had to
2 go over this for two months my jack was messed
3 up until I finally got a new one.

4 Q. Was that during the time period of
5 this written record of verbal warning referred
6 to as Hart-2?

7 A. Yes.

8 Q. And the battery change was for more
9 than ten minutes here?

10 A. I'm not sure. I wasn't counting
11 the time. I was waiting for my full charge
12 light to come on.

13 Q. The reason why you refused to sign,
14 did you relate that to the shop steward?

15 A. I told the supervisor that I was
16 working with.

17 Q. It says shop steward was present on
18 page 2?

19 A. Yes, the shop steward was there.
20 He's the one that signed the paperwork. So when
21 they called me in to ask, I think this was -- I
22 don't even know if this was the same day. They
23 gave me this. It has the date on it, but they
24 gave me the write up the next day. That's when

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1 we went in the office and the shop steward
2 signed.

3 Q. Did you explain on that day the
4 reasons?

5 A. Yes. And I told the supervisor.
6 And they still -- under the system it's showing
7 that, but this is what I was told, to go under
8 battery change.

9 Q. Let's go to D. Hart-3. It says,
10 Sherman is receiving his first written reprimand
11 for improper procedure and policy. Sherman
12 swiped under battery change collectively for
13 over 19 minutes and was under returns
14 collectively for 19 minutes. Sherman is
15 supposed to notify a supervisor in the case of
16 needing a new battery and there were no returns
17 on this specific night.

18 Can you explain what that was
19 about?

20 A. Yes.

21 Q. Do you remember it?

22 A. Yes. My jack died like four times
23 that night. That's why it says collectively.
24 It wasn't at one time. I don't know if one was

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1 longer than another or which time. But
2 collectively it was 19 minutes in a 12-hour
3 shift.

4 Q. It was 19 minutes in 12 hours. And
5 who was timing it?

6 A. The system times it, but no person.
7 We wouldn't time it individually. I was waiting
8 for my battery charge. I told one supervisor.
9 The other supervisor is saying, well, did you
10 tell him. I was like, he told me to swipe under
11 return. One supervisor said, well, swipe under
12 this.

13 Q. When you say swipe under this?

14 A. He's saying swipe under returns and
15 another supervisor says, well, swipe under
16 battery change if that's what it is. One of the
17 managers was like we don't like certain things
18 not showing under returns. Well, he told me to
19 swipe under returns because there's no function
20 always for certain things. They don't want you
21 under battery change for that. I was like
22 that's what I'm doing, battery change.

23 Q. Let's go to D. Hart-4. It says,
24 Sherman is receiving his second written

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1 reprimand for improper procedure and policy.

2 Sherman swiped under loader for 19 minutes
3 collectively. Sherman is not to be under the
4 loading function unless told to do so.

5 Is this the same -- this is also
6 September 28th. You're getting a second written
7 report on September 28th. It says October 7,
8 2014, but this was your violation. Written
9 reprimand October 7, 2014. We have one on the
10 5th and again on October 7th. We just explained
11 the one that was on the 5th?

12 A. Yes.

13 Q. The one that was on the 5th was
14 Number 3. And the one on Hart-4 is, correct me
15 if I'm wrong, October 7th, two days later?

16 A. Yes. This is coming from another
17 supervisor that I never worked with before. And
18 I'm working with my supervisor and I'm telling
19 him what's going on. And he's telling me what
20 function to swipe under. Then another
21 supervisor working in another area looks up what
22 I'm under and then comes and tells me why am I
23 under this. And I'm like I told my supervisor
24 there's no button for certain functions that we

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1 do so he said go under loader. If there's no
2 button for me to swipe under, what am I to do.
3 He was like swipe under loader.

4 Q. Both of these, Number 3 and 4 talk
5 about 19 minutes?

6 A. Yes.

7 Q. Was it actually the same infraction
8 or a different day?

9 A. They're saying it's two days later.
10 I don't get it either. Both days it's the same
11 supervisor that I don't work with that was
12 harassing me for reasons I don't know. And I
13 told them about that one. I'm not working with
14 this supervisor, why does he keep coming and
15 bothering me. And I would tell him who I'm
16 working for.

17 Q. The supervisor you were working
18 for, what did that supervisor indicate to you?

19 A. He told me what to do.

20 MS. GEE: Objection. Hearsay.

21 MR. POMERANTZ: You can
22 answer.

23 THE WITNESS: We didn't have
24 any problems. I told that supervisor

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1 it's clearly stated I'm working with
2 the RD supervisor. That supervisor
3 was only working with both employee
4 sections. So I didn't have no
5 problems with him. I was doing my
6 job.

7 BY MR. POMERANTZ:

8 Q. So that was Hart-4. Let's go to
9 Hart-5. This is a third written. On October
10 22, 2014, that's what it says, third written.
11 Sherman Hart is receiving his third written
12 reprimand for violation of policy and procedure
13 for the night of October 20th to the morning of
14 October 21st. Sherman was under personal break
15 for more than 46 minutes combined throughout the
16 night. This is excessive for personal breaks.

17 Can you explain that?

18 A. Yes. I was told, like I said, by
19 the supervisor I was working with to do
20 something, come off the system and repeat cases.
21 The cases that I was waiting for I had to find a
22 forklift guy to drop the pallets. That's why I
23 took so long, which my supervisor knew. And I
24 wrote a letter stating that day what happened.

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1 He said they took that letter that I wrote for
2 this write up because I didn't want to have to
3 go through grievances.

4 Q. You're looking at D-5A. Let's go
5 back to D-5. They're pretty much the same.

6 Both are written on October 22nd,
7 correct?

8 A. Yes.

9 Q. They're two separate infractions on
10 the same date? On D. Hart-5 it says, Sherman is
11 receiving his third written reprimand. And then
12 we have 5A says, receiving his second and third
13 written reprimand for violation of policy and
14 procedure for the night of October 21st?

15 A. Yes.

16 Q. And Sherman was under personal
17 break and then on the other -- there's one that
18 says you were under -- you worked for more than
19 35 minutes. See that on 5A? And then it says,
20 combined and after his 12:30 break. Sherman was
21 told to go under returns to re-pick a pallet by
22 his supervisor Ezra Ellis. The pallet he was
23 told to pick was R2A for RPD39 and was a total
24 of 5cs 5g BIB, 1cs. You know what that means.

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1 I surely don't.

2 What does that mean?

3 A. That's the name of the cases, what
4 kind of flavor it was and the size.

5 Q. And it says, this pallet should
6 have been done with a maximum of seven minutes.
7 ELS had this pallet. Who is ELS?

8 A. That's what they called the system
9 we're under, the timing system.

10 Q. The pallet being picked within 5.4
11 minute window and Sherman picked this pallet
12 within the time frame on his original ticket,
13 but took a half hour to pick the second pallet.

14 A. Previously the ticket was that all
15 these products was there the first time, that's
16 why I was able to do it in a timely manner. The
17 second time I went back and told the supervisor
18 I need this product, it's not there. I'm
19 waiting for the product to be brought to the
20 front. In the meantime, I'm telling the
21 supervisor who's like, okay, wait for the
22 product. Called it over the loud speak. So I'm
23 waiting for the forklift driver to come. That's
24 how long it took.

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1 Q. Did you have any control over the
2 forklifter?

3 A. No.

4 Q. Now, continue.

5 A. At 12:30 is my break. So in
6 between the time is still running. Then after
7 my break I come back and it's still not dropped.
8 That's what makes it combined of 35 minutes,
9 counting my 10-minute break in between.

10 Q. Let's go to D. Hart-6. And Sherman
11 is receiving a written warning for using his
12 personal cell phone while working on January 6,
13 2014. This infraction is against company
14 policy. Any further violation will result in
15 progressive disciplinary action up to and
16 including termination.

17 A. Yes.

18 Q. And you wrote -- that's your
19 handwriting below that one break at the time?

20 A. Yes.

21 Q. And could you explain why you wrote
22 that?

23 A. Because I was on break at the time
24 right next to the lunchroom that they said you

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1 were on the other side of the lunchroom. They
2 have a yellow barricade divider I guess where
3 our jacks are. Numerous people don't go to the
4 cafeteria on break, why are you singling me out,
5 I'm on break for a phone. You have a phone on
6 this side of the pole. Well, that's never been
7 told to me that I can't be on this side when
8 there's a lot of people up front in the work
9 area speaking on their phone.

10 Q. There were other individuals on the
11 phone?

12 A. Yes. We're on break at the time.
13 I leave my phone up front in the locker where it
14 won't get broke because I broke a phone when I
15 first started. Ever since I broke the phone, I
16 leave the phone in the locker. I don't like to
17 go in the cafeteria because it's noisy.

18 Q. Is there a problem if it's noisy?

19 A. Yes, I couldn't hear.

20 Q. Did you explain that?

21 A. Well, I didn't explain it because
22 I'm on break. And he knows I was on break. I
23 didn't want to go through a grievance or any
24 situation to get further in conflict with the

Sherman Hart

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1 supervisor. I tried to avoid that when I can.

2 Q. You didn't sign it. It says, John
3 something other, Sherman?

4 A. Yes.

5 Q. Chose not to sign?

6 A. Yes. Because it was three of us
7 out there. And he told us all. How am I
8 getting a write up and no one else when you told
9 all of us to get back to work. We had a minute
10 left on our break.

11 Q. This says January 6, 2014 and
12 everything else says January 9th.

13 Can you explain that?

14 A. I didn't get the write up until
15 days later on the 9th.

16 Q. Were you advised of it on the 6th?

17 A. Yes, on the 6th he said it, but I
18 didn't know I was going to get written up. Like
19 I said, it was three of us. But I guess three
20 days later I got written up for that.

21 Q. You got written up on -- you got a
22 written reprimand on the 6th, but you didn't
23 receive it on the 6th?

24 A. No, I received it on the 9th.

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1 Q. And on the 9th you indicated what
2 you just testified to?

3 A. Yes, I was shocked that I was
4 getting the write up. I was on break. It's
5 three days later.

6 Q. Let's go to number 7. As I was
7 making my way around the warehouse, as I do
8 every night, I noticed Sherman Hart in the back
9 of the warehouse next to the forklift pallet
10 jack battery area. I then noticed Sherman was
11 on his phone talking. I went into our employee
12 maintenance program and SAP. What is that?

13 A. I guess it's part of the computer
14 system.

15 Q. To see what Sherman's job
16 description was and he was under a personal
17 break. Knowing that being on the phone is
18 against company policy, I then spoke with our
19 other warehouse supervisor Rantz to see if
20 Sherman had asked to use the phone. Rantz was
21 not notified by Sherman. Can you explain?

22 A. I never received this and Rantz
23 never said nothing to me about a write up.

24 Q. You say you never received it?

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1 A. Yes, I never received this. And
2 Rantz never said nothing to me about being on
3 the phone. That's the supervisor I was working
4 with. This is once again the other supervisor
5 who seems to always want to have something out
6 for me.

7 Q. So you actually never received
8 this?

9 A. No, I never even worked with this
10 supervisor.

11 Q. Patrick Nolan, it says shop steward
12 there. You weren't brought in on this?

13 A. With these write ups, a lot of them
14 they sign and predate. And I'm not around and
15 this one they never gave to me. I never even
16 received this.

17 Q. Have there been other instances
18 where they were predating?

19 A. Yes, like we see the one on the 6th
20 and 9th. They already signed it. When I
21 finally got mine on the 9th with the signature,
22 that's when I got it three days later, I hear
23 about it. I never heard about it that day or
24 the next day. It was on the 9th.

Sherman Hart

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1 Q. Let's go to Hart-8. This is a
2 third written warning, November 6th. As I was
3 making my way around the warehouse, I noticed
4 Sherman in the F Aisle showing an associate
5 something on his phone. I reminded Sherman that
6 phones were not permitted. He told me he was on
7 break. So I explained to Sherman phones are not
8 allowed on the floor at any time. I checked POD
9 time maintenance to see if Sherman was under the
10 break function being that it was already nearly
11 20 minutes past the 2:30 break time and Sherman
12 was not under the break function.

13 Can you explain about this
14 violation?

15 A. I never said I was on break. And I
16 was coming from break because I went to break
17 late that day and I was coming back from break,
18 me and another employee. The supervisor claims
19 he seen a phone. And I was like, what color is
20 my phone. And he said, I seen a white phone. I
21 don't even got a white phone. My phone is red.
22 I didn't tell him the color. I said my phone is
23 in the locker. You want to see my phone. It
24 wasn't my phone. He was like --

May 27, 2015

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1 MS. GEE: Objection. Hearsay.

2 MR. POMERANTZ: You can
3 explain.

4 THE WITNESS: I went and got
5 my phone and showed him my phone. He
6 was like, I got a light. And there
7 was two employees there to witness
8 that. And I had them to witness it.
9 When I presented it at a grievance
10 they said, well, they have to be here.
11 We can't just call. And I told my
12 union representative. And he called
13 and he spoke with them and I texted
14 with the employee who seen it and said
15 he was going to do it. And after I
16 was fired, I heard they were harassing
17 that employee. And he was scared
18 to --

19 MS. GEE: I'm going to object
20 and move to strike what he heard about
21 another employee.

22 THE WITNESS: The other
23 employee also told the supervisor this
24 is my phone.

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1 MS. GEE: Objection. This is
2 hearsay.

3 THE WITNESS: Not hearsay. He
4 told them. I heard it. He told the
5 supervisor this. He said this is my
6 phone. He said out of his mouth, this
7 is my phone. He didn't have a phone.
8 And he's like why do you want to help
9 this guy out.

10 BY MR. POMERANTZ:

11 Q. These were all employees?

12 A. Yes. And he definitely told him
13 this is my phone. And he basically was like he
14 wasn't going to remove the write up. I didn't
15 have a phone and I showed him the phone. It had
16 my logo on it and everything. After he seen it,
17 then he switched his story. And he said I seen
18 a light. And he's telling you it's his phone
19 and you're still trying to put it on me as my
20 phone. He wouldn't hear it. The same
21 supervisor I never worked with.

22 MR. POMERANTZ: I have no
23 further questions.

24 MS. GEE: No follow up for me.

Sherman Hart

May 27, 2015

Hart vs. Philadelphia Coca-Cola

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ERRATA SHEET

PAGE	LINE	CORRECTION	REASON FOR CORRECTION
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5	_____	_____	_____
6	_____	_____	_____
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Sherman Hart

May 27, 2015

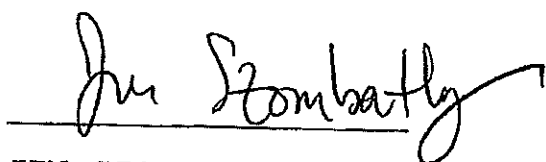
Hart vs. Philadelphia Coca-Cola

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1 CERTIFICATION

2 - - - - -

3 I hereby certify that the testimony
4 and the proceedings in the foregoing matter
5 are contained fully and accurately in the
6 stenographic notes taken by me, and that the
7 copy is a true and correct transcript of the
8 same.

9
10 
11

12 JEN SZOMBATHY

13 Professional Court Reporter

14
15 The foregoing certification does
16 not apply to any reproduction of the same by
17 any means unless under the direct control
18 and/or supervision of the certifying
19 shorthand reporter.

20 - - - - -

EXHIBIT D

Law Offices
GERALD JAY POMERANTZ & ASSOCIATES, P.C

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21 S. 12th Street
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TELEPHONE (267) 255-7229

July 13, 2015

Judge Tina Maria Rago
PA Workers Comp.
110 N. 8th Street, 4th Floor
Philadelphia, PA 19107-5157

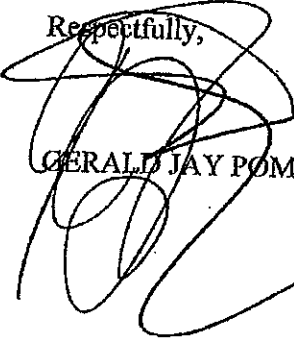
Re: Sherman Hart v.
Philadelphia Coca-Cola Bottling
WCAIS Claim # 7417594
Dispute # DSP-7417594-1
WCID # W 101196095

Dear Judge Rago:

Although I attended hearing on behalf of Mr. Hart in the above matter, I have not formally entered my appearance on his behalf. Enclosed is appropriate Notice of Appearance.

Thank you very much.

Respectfully,


GERALD JAY POMERANTZ

GJP:net
Enc.

cc w/enc. Anthony J. Bilotti, Esquire

PENNSYLVANIA DEPARTMENT OF LABOR & INDUSTRY
WORKERS COMPENSATION BUREAU

In the matter of:

Sherman Hart

vs.

Philadelphia Coca-Cola Bottling

WCAIS Claim # 7417594

Dispute # DSP-7417594-1

Employee WCID # W 101196095

D/Injury 10/22/14

NOTICE OF APPEARANCE

Please enter my appearance in the above captioned matter on behalf of:

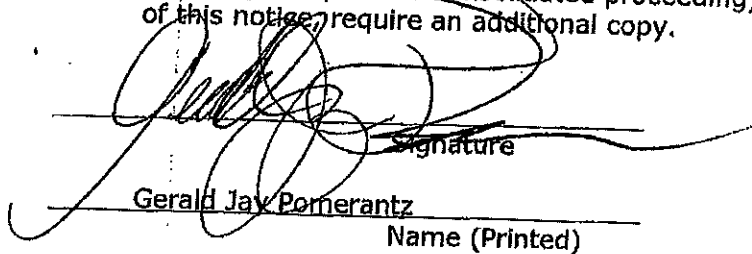
Sherman Hart

I am authorized to accept service on behalf of said participant in this matter.

(CHECK ONE)

☒ On the basis of this notice, I request a copy of each document hereafter issued to my client by the Pennsylvania Human Relations Commission in this matter.

☐ I am already receiving or have access to a copy of each document issued to my client by the Pennsylvania Human Relations Commission in this matter (alone, or in a consolidated proceeding) and do not, on the basis of this notice, require an additional copy.


Signature
Gerald Jay Pomerantz
Name (Printed)

21 S. 12th Street, 7th Floor
P.O. Address

Philadelphia, PA 19107
City, State, and Zip Code

215-569-866
Telephone (including area code)

Date

EXHIBIT E

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION

SHERMAN HART

vs.

BUREAU CLAIM NO. 7417594

PHILADELPHIA COCA-COLA

ORIGINAL

Oral deposition of LAWRENCE

GOREN, M.D., taken at the law offices of
Anthony J. Bilotti & Associates, LLC,
Rose Tree Corporate Center, Building II,
Suite 4035, 1400 North Providence Road,
Media, Pennsylvania, on Thursday, July
23, 2015, commencing at 10:08 a.m.,
before John M. Colasante, a Registered
Professional Reporter and Notary Public.

APPEARANCES:

ANTHONY J. BILOTTI & ASSOCIATES, LLC
 ELIZABETH GEE, ESQUIRE
 egee@bilotttilaw.com
 Rose Tree Corporate Center
 1400 North Providence Road
 Building II, Suite 4035
 Media, Pennsylvania 19063
 484-444-4400
 Counsel for Defendant

EXAMINATION INDEX

LAWRENCE GOREN, M.D.	
DIRECT BY MS. GEE	4
DIRECT BY MS. GEE	5

EXHIBIT INDEX

MARKED

30(b)(6) Ponturo

7	Letter dated 1/13/15 to Mr. Hart from Ms. Cortez, and letter dated 2/2/15 to Mr. Hart from Ms. Cortez	18
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D-Goren

1	Letter dated 7/10/15 to Mr. Pomerantz from Mr. Bilotti	4
2	Report of date of visit of 10/22/14	11
3	Work Status Report dated 12/22/14	12
4	Work Status Report dated 12/29/14	13
5	Report of Dr. Goren dated 11/26/14	15
6	Work Status Report dated 11/26/14	16

LAWRENCE GOREN, M.D.

3

1 LAWRENCE GOREN, M.D., having
2 been duly sworn, was examined and
3 testified as follows:

4 MS. GEE: We are here in the
5 matter of Sherman Hart versus Coca-Cola
6 to take the trial deposition of
7 Dr. Lawrence Goren in lieu of his live
8 testimony before a workers' compensation
9 judge.

10 Earlier this morning, we
11 received a call from Gerald Pomerantz's
12 office. He indicated that he would not
13 be attending today's deposition. I did
14 call him and speak with him personally.
15 He indicated that he would not be
16 attending, and he did not want to
17 participate by phone, but that we should
18 proceed as scheduled.

19 I'm going to have marked and
20 enter into evidence what we'll mark as
21 D-Goren-1, which is a letter dated July
22 10th, 2015, with an attached Notice of
23 Oral Deposition, which notified
24 Mr. Pomerantz that the deposition of

LAWRENCE GOREN, M.D.

4

1 Dr. Goren would take place today.

2 So I'll enter that into
3 evidence, D-Goren-1.

4 (Exhibit D-Goren-1 was marked
5 for identification.)

6 DIRECT EXAMINATION ON QUALIFICATIONS

7 BY MS. GEE:

8 Q. Dr. Goren, would you please state
9 your name for the record, please.

10 A. It's Lawrence Goren.

11 Q. Are you licensed to practice
12 medicine in the Commonwealth of
13 Pennsylvania?

14 A. I am.

15 Q. We did not meet prior to today's
16 deposition to discuss the merits of this
17 case, did we?

18 A. No, we did not.

19 Q. Okay. Could you briefly tell us
20 about some of your education and
21 training?

22 A. I was -- I graduated from
23 Hahnemann Medical College in 1978. I
24 did a general surgical residency and

LAWRENCE GOREN, M.D.

5

1 cardiovascular fellowship, finished in
2 1985.

3 Subsequent to that, I began to do
4 occupational medicine, which I've done
5 exclusively since approximately 1985,
6 1986, and ultimately formed a company
7 called Onsite Innovations, which
8 provides on-site occupational medical
9 care to employees both local in the
10 Philadelphia area and throughout the
11 country. I own the company. And I do
12 still practice and see patients in the
13 Philadelphia area.

14 Q. How long have you had the Onsite
15 Innovations practice within Coca-Cola?

16 A. A little more than ten years.

17 MS. GEE: Okay. I would be
18 offering Dr. Goren as an expert in
19 occupational medicine.

20 DIRECT EXAMINATION

21 BY MS. GEE:

22 Q. Are there other medical
23 practitioners within Onsite Innovations?

24 A. Yes, there are several.

LAWRENCE GOREN, M.D.

6

1 Q. And could you describe these
2 practitioners?

3 A. We have a group of practitioners,
4 from other physicians, to nurse
5 practitioners, physicians' assistants,
6 athletic trainers, emergency medical
7 technicians, paramedics, and medical
8 assistants.

9 Q. Do you oversee the physicians'
10 assistants and nurse practitioners and
11 the other practitioners that you've
12 mentioned?

13 A. I oversee some of them because of
14 compliance issues. There is a limited
15 amount that I oversee. So others do as
16 well. But I oversee certain physicians'
17 assistants and nurse practitioners. I
18 do.

19 Q. And you trust the expertise of
20 these practitioners to treat and
21 evaluate patients?

22 A. Absolutely.

23 Q. Is Debra Cortez a physicians'
24 assistant at the Coca-Cola location of

LAWRENCE GOREN, M.D.

7

1 Onsite Innovations?

2 A. Yes, she is.

3 Q. Is it a regular part of your
4 practice to review the reports and
5 records taken by your PAs, such as Debra
6 Cortez, and any nurse practitioners?

7 A. Yes.

8 Q. Do you rely on their reports in
9 forming diagnoses and treatment plans?

10 A. Absolutely.

11 Q. Did you see and treat Sherman Hart
12 in conjunction with an October 22nd,
13 2014 work injury at Coca-Cola?

14 A. Yes, I did.

15 Q. And in your years of experiencing
16 treating employees of Coca-Cola, have
17 you become generally familiar with the
18 job duties of various positions?

19 A. Absolutely.

20 Q. Would you say you're just
21 generally familiar with the job duties
22 of a general warehouse worker?

23 A. I absolutely am.

24 Q. When was Mr. Hart first seen for

LAWRENCE GOREN, M.D.

8

1 treatment at Onsite Innovations?

2 A. He was seen in our Onsite clinic
3 on October 22nd, 2014 by Miss Cortez.

4 Q. Did Miss Cortez prepare a report
5 in conjunction with that office visit?

6 A. She did.

7 Q. Did you review this report and
8 sign off on it?

9 A. I reviewed it and countersigned
10 it, yes.

11 Q. What history did Mr. Hart provide
12 on that date?

13 A. He stated that on 10/22/2014,
14 while working in the warehouse, and
15 performing his usual duties, he was
16 lifting a case of products, and his left
17 foot caught in the plastic of the pallet
18 where he was lifting, and when he pushed
19 to remove it from the case that he
20 picked up, he felt pain to his lower
21 back and into his groin.

22 And he also related the history
23 that he was still continuing to have
24 right lower back pain, with radiation

LAWRENCE GOREN, M.D.

9

1 into the right groin and the leg, with
2 no paresthesias.

3 He was seen just prior to that in
4 the emergency room at Aria Frankford
5 Campus, was given some Toradol and a
6 prescription for Toradol and Flexeril
7 before his release.

8 And that was the initial
9 presentation besides going into some
10 prior history that he had.

11 Q. Okay. And did Miss Cortez perform
12 a physical examination on that date?

13 A. She did. She did.

14 Q. Did she note anything of
15 significance to you?

16 A. He had complaints of tenderness in
17 the right-sided musculature, and he had
18 limited range of motion in all planes
19 because of complaints of pain.

20 However, his nerve root tests were
21 negative, straight leg raising exam was
22 negative, and only -- with reproduction
23 for radicular pain, but only axial right
24 lumbar pain. She did notice, again,

LAWRENCE GOREN, M.D.

10

1 from a history standpoint that there
2 were no radicular complaints on any of
3 these maneuvers.

4 So what's of significance is that
5 he had axial or back pain that was
6 largely muscular, without any positive
7 neurologic findings or signs of nerve
8 root irritation that could be associated
9 with either a nerve root pull or a
10 herniated disc.

11 Q. What was Mr. Hart's initial
12 diagnosis?

13 A. It was a lumbar strain and sprain.

14 Q. Was he released to work?

15 A. He was. He was released to
16 modified duty at that time. He was
17 given Naprosyn to be taken twice daily
18 with food. He was also given
19 methocarbamol, which is a muscle
20 relaxer, to be taken at bedtime as
21 needed. And he was scheduled to return
22 to be seen in the clinic on the 28th.
23 Q. Okay. And I'm going to show you
24 what we'll have marked as D-Goren-2.

LAWRENCE GOREN, M.D.

11

1 Is this a copy of the report that
2 Miss Cortez authored and you signed off
3 on pertaining to an office visit of
4 October 22nd --

5 A. Yes, it is.

6 Q. -- 2014?

7 MS. GEE: I'll have that
8 entered as D-Goren-2.

9 (Exhibit D-Goren-2 was marked
10 for identification.)

11 BY MS. GEE:

12 Q. Was a work status report filled
13 out in conjunction with that visit?

14 A. It was.

15 Q. And according to this report, what
16 were the work restrictions at that time?

17 A. The work restrictions were that he
18 do limited bending at the waist, and he
19 stand and sit as tolerated. He could
20 climb ladders and he could drive. He
21 could use his -- these are the
22 non-restricted areas. He could use his
23 upper extremities for grasping and for
24 moving about without any restrictions.

LAWRENCE GOREN, M.D.

12

1 So the pointed restrictions were
2 limiting bending and sitting and
3 standing as tolerated.

4 Q. And I'm going to show you what
5 we'll have marked as D-Goren-3.

6 Is this a true and accurate copy
7 of the work status report?

8 A. Yes, it is.

9 MS. GEE: I'll have that
10 entered into evidence as well.

11 (Exhibit D-Goren-3 was marked
12 for identification.)

13 BY MS. GEE:

14 Q. Did Mr. Hart return to the clinic
15 after that initial visit?

16 A. He was seen on the 29th. And I
17 don't have the accompanying note for
18 that. However, I do know that at that
19 time he was placed on literally the same
20 restrictions, but he was also placed in
21 physical therapy.

22 Q. And was a work status report
23 filled out in conjunction with an office
24 visit of 10/29/14?

LAWRENCE GOREN, M.D.

13

1 A. It was.

2 Q. And you previously stated that the
3 same restrictions applied as the visit
4 of October 22nd, 2014?

5 A. Yes.

6 Q. And I'm showing you a report we'll
7 have marked as D-Goren-4, a work status
8 report of 10/29/14.

9 Is this is a true and accurate
10 copy of that report?

11 A. It is.

12 MS. GEE: I'll have that
13 entered into evidence.

14 (Exhibit D-Goren-4 was marked
15 for identification.)

16 BY MS. GEE:

17 Q. Did Mr. Hart return to the Onsite
18 Innovations Clinic after that?

19 A. Yes.

20 Q. And what was that date?

21 A. He was seen by me on 11/26/14.

22 Q. And did you personally examine him
23 on that date?

24 A. I did.

LAWRENCE GOREN, M.D.

14

1 Q. Can you explain what, if anything,
2 you found on that examination?

3 A. In terms of his history, he stated
4 that he was doing a little bit better.
5 He still complained of significant
6 stiffness in his low back, and low back
7 pain, when he was up and moving and
8 repetitively bending, although he was
9 restricted from the warehouse, just in
10 terms of general things that he did.

11 But what I don't put here, and
12 because I exclude it, is he didn't have
13 radicular complaints, he didn't have
14 paresthesias. He had none of that.
15 These were the only complaints that he
16 had. That's the way I do my notes.

17 Q. And you noted that you had sent
18 him to physical therapy?

19 A. Yes.

20 Q. Are you aware if he attended
21 physical therapy?

22 A. He did.

23 Q. He did?

24 A. He did.

LAWRENCE GOREN, M.D.

15

1 Q. And did you prepare a report in
2 conjunction with the November 26th, 2014
3 office visit?

4 A. Yes. Yes.

5 Q. We'll have marked the report that
6 you authored as D-Goren-5. Is this a
7 true and accurate copy of the report?

8 A. It is.

9 MS. GEE: I'll have that
10 entered into evidence.

11 (Exhibit D-Goren-5 was marked
12 for identification.)

13 BY MS. GEE:

14 Q. Did you fill out, or it looks like
15 Miss Cortez, fill out a work status
16 report in conjunction with the November
17 26th, 2014 office visit?

18 A. Yes.

19 Q. What, if any, restrictions did you
20 place on the claimant at that time?

21 A. The same restrictions as before,
22 that he -- I only limited his sit,
23 stand, walking to as tolerated. Bending
24 at the waist was limited. And there

LAWRENCE GOREN, M.D.

16

1 were no restrictions on climbing ladders
2 or driving. So it was limited bending
3 at the waist and sit, stand and walk as
4 tolerated.

5 Q. Now, I see that it says "Next
6 appointment at Coca-Cola Medical" on
7 this work status report. What does this
8 indicate?

9 A. It says he was to return on 12/17
10 at 6:00 p.m., because the office is open
11 then, and he was a second-shifter at
12 that time.

13 Q. Okay. I'm going to show you what
14 we'll have marked as D-Goren-6.

15 Is this a true and accurate copy
16 of the work status report in conjunction
17 with an office visit of 11/26/14?

18 A. Yes.

19 MS. GEE: I'll have that
20 entered into evidence.

21 (Exhibit D-Goren-6 was marked
22 for identification.

23 BY MS. GEE:

24 Q. Now, did Mr. Hart return to Onsite

LAWRENCE GOREN, M.D.

17

1 Innovations after that?

2 A. No.

3 Q. And I'm going to show you what
4 we'll have marked as D-Goren-7. It's
5 two pages.

6 Can you identify these two
7 documents for me?

8 A. Yes. They are letters that were
9 sent on 1/13, and again on February 2nd,
10 because Mr. Hart did not return, was
11 non-compliant. There were several
12 attempts to contact him. He had stopped
13 attending everything, and was lost to
14 follow-up. So these notes were sent to
15 him.

16 Q. What are the dates of these
17 letters?

18 A. 1/13/15 and February 2nd, 2015.

19 Q. Did you hear from the claimant at
20 all as a result of sending these two
21 letters?

22 A. No.

23 Q. Was he discharged to full duty as
24 of February 2nd, 2015?

LAWRENCE GOREN, M.D.

18

1 A. Yes. It was an administrative
2 discharge. And as stated, we could only
3 deduce that he needed no further care
4 and was capable of full duty.

5 MS. GEE: Those are all the
6 questions I have for you. Thank you.

7 I'm sorry. One more thing.
8 I forgot to enter this into evidence.

9 We'll have these two letters
10 marked collectively as D-Goren-7.

11 BY MS. GEE:

12 Q. Are these true and accurate copies
13 of the letters that were sent on 1/13/15
14 and 2/2/15 to Mr. Hart?

15 A. Yes.

16 MS. GEE: And we'll enter
17 these into evidence, D-Goren-7.

18 Okay. Those are all the
19 questions that I have for you.

20 (Exhibit D-Goren-7 was marked
21 for identification.)

22 (Deposition concluded at
23 10:19 a.m.)

24

1 CERTIFICATION

2
3 I, JOHN M. COLASANTE,
4 Registered Professional Reporter and
5 Notary Public in and for the
6 Commonwealth of Pennsylvania, hereby
7 certify that the foregoing is a true and
8 accurate transcript of the deposition of
9 said witness who was first duly sworn by
10 me on the date and place herein before
11 set forth.

12 I FURTHER CERTIFY that I am
13 neither attorney nor counsel for, not
14 related to nor employed by any of the
15 parties to the action in which this
16 deposition was taken; and further that I
17 am not a relative or employee of any
18 attorney or counsel employed in this
19 action, nor am I financially interested
20 in this case.

21 

22 _____
23 JOHN M. COLASANTE
24 Registered Professional Reporter
and Notary Public

SHERMAN HART v.
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LAWRENCE GOREN, M.D.
July 23, 2015

2				
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6				
6:00 (1) 16:10				

ANTHONY J. BILOTTI & ASSOCIATES, LLC

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Please Reply to Media Office

DIRECT DIAL (484) 444-4416
AJB@BILOTTILAW.COM

July 10, 2015

Gerald Jay Pomerantz
21 S. 12th St., 7th Fl.
Philadelphia, PA 19107

Re: *Sherman Hart v. The Coca-Cola Company*
WCAIS Claim No. 7417594

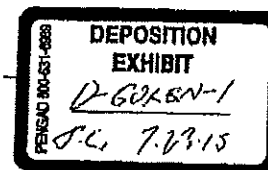
Dear Mr. Pomerantz:

This will confirm that we have scheduled the oral deposition of Lawrence Goren, M.D., for July 23, 2015 at 10:00 a.m., in the above-captioned matter. A signed Subpoena from Judge Rago as well as Notice of Deposition is enclosed.

Very truly yours,

Anthony J. Bilotti
for Anthony J. Bilotti & Associates, LLC

AJB/bm
Enclosure
00169609.DOC



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
OFFICE OF ADJUDICATION**

SHERMAN HART

v.

PHILADELPHIA COCA-COLA

:
:
:
:
:

BUREAU CLAIM #7417594

NOTICE OF ORAL DEPOSITION

**TO: Gerald Jay Pomerantz
21 S. 12th St., 7th Fl.
Philadelphia, PA 19107**

**Lawrence Goren, M.D.
OnSite Innovations
5725 E. Erie Ave
Philadelphia PA 19134**

Please take notice that the undersigned will take the Oral Deposition of the person identified below on the date and at the time and place indicated below, pursuant to the Special Rules applicable thereto.

DEPONENT: Lawrence Goren, M.D.

DATE & TIME: July 23, 2015 at 10:00 a.m.

**LOCATION: Anthony J. Bilotti, Anthony J. Bilotti & Associates, LLC,
Rose Tree Corporate Center - Bldg. II,
Ste. 4035, 1400 N. Providence Rd., Media, PA 19063**

You may object to this Oral Deposition by mailing or delivering a letter listing your objections to **Anthony J. Bilotti, Anthony J. Bilotti & Associates, LLC, Rose Tree Corporate Center - Bldg. II, Ste. 4035, 1400 N. Providence Rd., Media, PA 19063** at least ten (10) days before July 23, 2015.

ANTHONY J. BILOTTI & ASSOCIATES, LLC

By:

Anthony J. Bilotti
Attorneys for Defendant

Dated: July 8, 2015

cc: The Honorable Tina Marie Rago
Brusilow & Associates

00169604.DOC

ONSITE INNOVATIONS@CCR MEDICAL SERVICES
725 East Erie Avenue
Philadelphia, PA 19134

Phone: 215-427-6986
Fax: 215-291-1715
email:dcortez@onsite-innovations.com

Sherman Hart

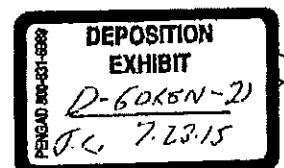
DOV: 10/22/2014
DOB: 12/09/1982
DOI: 10/22/2014
Claim #: 30142951559-0001

S: Sherman presents today for initial evaluation. He states that early this morning while performing his duties in the warehouse he was lifting a case of products and his left foot caught in plastic of the pallet and when he pushed it to move the case he had picked up he felt pain to the lower back and into the groin. He presents now with a complain of pain to the right lower back with radiation into the right groin and leg and no paresthesias. He was initially evaluated at Arla Frankford Campus and given an injection of Toradol and a prescription of Toradol and Flexeril before release. He reports a history of a previous MVA approximately two years ago with the lower back injury he states. There is no history of herniated disc at that time. He has taken no oral medications but did apply topical Icy-Hot to the lumbar spine without relief.

O: Sherman is listing to the right on ambulation and when sitting. He complains of tenderness to palpation to the right paravertebral musculature of the lumbar spine without spasms palpable. He has very limited active range of motion in all planes due to complaints of pain throughout. Sitting Root and CVAT is negative. Straight leg raise to the left lower extremity elicits complaints of pain to the right lumbar spine. Straight leg raise to the right lower extremity elicits complaints of pain to the right lumbar spine. There are no radicular complaints to either extremity on these maneuvers. Sitting Root to the left lower extremity elicits complaints of pain to the left lumbar spine and to the right lower extremity to the right lumbar spine. There are no radicular complaints with Sitting Root testing. Sherman is able to walk on his heels and toes normally. DTRs are normal and muscle strength is normal to lower extremities. Pedal pulses and sensation is intact throughout.

A: Lumbar strain/sprain.

P: Sherman is placed on modified duty at this time. He was given Naprosyn 500 mg to be taken one twice daily with food. He was also given methocarbamol 500 mg to be taken one-half to one tablet at bedtime as needed. Possible side-effects, adverse reactions and precautions of both medications were reviewed. He is scheduled to follow up on 10/28/14 and may contact the clinic should he have any questions or concerns between now and then.



ONSITE INNOVATIONS@CCR MEDICAL SERVICES
725 East Erie Avenue
Philadelphia, PA 19134

Phone: 215-427-6986
Fax: 215-291-1715
email:dcortez@onsite-innovations.com


Debra A. Cortez, PA-C

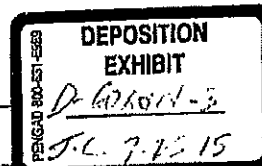

Lawrence J. Goretti, MD

DAC/mm

Doc#24206909

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Philadelphia, PA 19134

Phone: 215-427-6986
Fax: 215-291-1715
Email: dcortez@onsite-innovations.com

WORK STATUS REPORT

DATE:	10/22/14	NAME:	Sherman Hart
CL#	30142951559-0001	DOI:	10/22/14
Ox:	Lumbar S/S		

WORK STATUS: Modified duty ,

RESTRICTIONS:

MAX LIFT: 0 LBS. MAX CARRY: 0 LBS MAX PUSH/PULL: 0 LBS
 RIGHT ARM/LEFT ARM/BOTH GRASPING: NONE/LIGHT ONLY/LIMITED/NO LIMIT
 BEND AT WAIST: NONE/LIMITED/NO LIMIT SIT/STAND/WALK: NONE/LIMITED/AS TOLERATED/NO LIMIT
 CLIMBING LADDERS: NONE/LIMITED/NO LIMIT
 DRIVING: NONE/MAY DRIVE TRUCK/FORK LIFT ONLY/NO LIMIT
 OTHER: HEP

REFERRALS:

NEXT APPT AT COCA-COLA MEDICAL:	10/28/14	TIME:	3:30 PM
---------------------------------	----------	-------	---------

I understand the above work status/restrictions and instructions. Copies of this form have been provided to me for my supervisor and myself.

EMPLOYEE SIGNATURE *Sherman Hart* DATE 10-22-14

Debra A. Cortez DATE: 10/22/14
 Debra A. Cortez, PA-C / Lawrence Goren, MD

Classified - Internal use

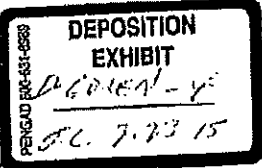
Revised 9/23/14

D. Goren-3

ONSITE INNOVATIONS@CCR MEDICAL SERVICES
725 East Erie Avenue
Philadelphia, PA 19134

Phone: 215-427-6986
Fax: 215-291-1715
Email: dcortez@onsite-innovations.com

WORK STATUS REPORT



DATE:	10/29/14	NAME:	Sherman Hart
CL#	30142951559-0001	DOI:	10/22/14
Dx:	Lumbar S/S		
WORK STATUS: Modified duty			

RESTRICTIONS:

MAX LIFT:	0	LBS.	MAX CARRY:	0	LBS	MAX PUSH/PULL:	0	LBS
RIGHT ARM/LEFT ARM/BOTH		GRASPING: NONE/LIGHT ONLY/LIMITED/NO LIMIT						
BEND AT WAIST:		NONE/LIMITED/NO LIMIT		SIT/STAND/WALK: NONE/LIMITED/AS TOLERATED/NO LIMIT				
CLIMBING LADDERS:		NONE/LIMITED/NO LIMIT						
DRIVING:		NONE/MAY DRIVE TRUCK/FORK LIFT ONLY/NO LIMIT						
OTHER: HEP								

REFERRALS:

NEXT APPT AT COCA-COLA MEDICAL:	10/31/14 Dr. Goren	TIME:	9:00 AM
---------------------------------	--------------------	-------	---------

I understand the above work status/restrictions and instructions. Copies of this form have been provided to me for my supervisor and myself.

EMPLOYEE SIGNATURE <u><i>Sherman Hart</i></u>	DATE <u>10-29-14</u>
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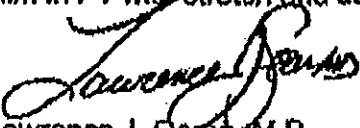
<u><i>Debra A. Cortez</i></u> Debra A. Cortez, PA-C / Lawrence Goren, MD	DATE: <u>10/29/14</u>
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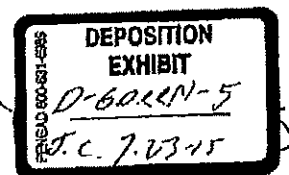
11/26/14 SHERMAN HART
Claim #301429615590001

Sherman is doing a little bit better. He mostly complains of significant stiffness and low back pain when he is up and bending repetitively.

His exam reveals that he has tightness in the lumbar paraspinals with pain at the end range of flexion and extension limited to 5 degrees. He has very tight hip flexors. Hamstrings are not tight. He has no neurologic findings and negative straight leg raising exam.

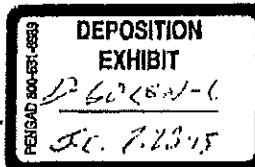
He is heavily muscled, but extremely tight and very tight when he gets through forward flexion. We will continue him on modified duty. We will continue him in PT with stretch and using a stim unit. I will see him in 2 weeks.


Lawrence J. Goren, M.D.
LJG:tal



ONSITE INNOVATIONS@CCR MEDICAL SERVICES
725 East Erie Avenue
Philadelphia, PA 19134

Phone: 215-427-6986
Fax: 215-291-1715
Email: dcortez@onsite-innovations.com

WORK STATUS REPORT

DATE:	11/26/14	NAME:	Sherman Hart	
CL#	30142951559-0001	DOI:	10/22/14	Dx:
WORK STATUS: Modified duty				Lumbar S/S Groin S/S

RESTRICTIONS:

MAX LIFT:	20	LBS.	MAX CARRY:	20	LBS	MAX PUSH/PULL:	20	LBS
RIGHT ARM/LEFT ARM/BOTH			GRASPING: NONE/LIGHT ONLY/LIMITED/NO LIMIT					
BEND AT WAIST: NONE/LIMITED/NO LIMIT			SIT/STAND/WALK: NONE/LIMITED/AS TOLERATED/NO LIMIT					
CLIMBING LADDERS:			NONE/LIMITED/NO LIMIT					
DRIVING:			NONE/MAY DRIVE TRUCK/FORK LIFT ONLY/NO LIMIT					
OTHER: Continue PT								

REFERRALS:

NEXT APPT AT COCA-COLA MEDICAL:	12/17/14	TIME:	6:00 PM
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I understand the above work status/restrictions and instructions. Copies of this form have been provided to me for my supervisor and myself.

EMPLOYEE SIGNATURE <i>[Signature]</i>	DATE 11/24/14
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<i>[Signature]</i> Debra A. Cortez, PA-C / Lawrence Goren, MD	DATE: 11/26/14
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[Signature]
Revised 9/23/14

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Phone: 215-427-6986
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Date: 1/13/15

To: Sherman Hart
Re: Claim # 30142951559-0001
DOI: 10/22/14

There have been several attempts to reach you in order to re-schedule the follow-up appointment you missed on 12/17/14. Please contact CCR Medical Services to discuss your claim and reported injury. Failure to comply with this request by 1/19/15 may result in discharge from our care, as we can only deduce that you are no longer in need of medical services for your reported injury.

A copy of this letter has been forwarded to your supervisor and insurance adjuster at Sedgwick CMS for their records.

Thank you,


Debra A. Cortez, PA-C

